

## **Remarks**

### **Claim Status**

The Final Rejection, mailed from the USPTO on November 13, 2008 indicated that Claims 7-9 and 13-49 were pending and under examination. Claims 7-9, 28 and 33-39 were deemed to recite allowable subject matter. Claims 13-27, 29-32 and 40-47 were withdrawn from further consideration pursuant to the provisions of 37 CFR §1.142(b), as being drawn to nonelected inventions. Claims 48 and 49 were rejected.

### **Claim Amendments**

Please cancel claims 48 and 49 (claims under final rejection). Please cancel claims 13-27, 29-32 and 40-47 (withdrawn claims).

### **Comments re: Non-compliant Amendment After Final**

In response to the above-referenced Final Rejection, Applicants filed an Amendment After Final (AAF) on February 10, 2009. In the AAF Response, Applicants attempted to put the application in condition for allowance, by requesting cancellation of claims 48 and 49 (the only claims with outstanding substantive rejections).

However, the Amendment After Final was not entered into the record because it was considered to be non-compliant with the provisions of 37 CFR§1.121 due to a typographical error which caused the text of claim 40 (a withdrawn claim) as it was submitted in the Claim Listing to include a word which was deleted in a prior amendment (filed August 1, 2008). The finding of non-compliance resulted from the impermissible change in the text of a claim without the use of markings (i.e., underlining) to indicate how the amended text differed from its immediately prior version.

More specifically, the amendment was not entered because "while claim 40 was amended 8/1/08 to delete the word "a" from the phrase "a human VEGF," in the amendment filed February 10, 2009, it appears that the word "a" was reintroduced to claim 40."

### **Claims 40-47 Were Withdrawn from Consideration by the Examiner in the Final Rejection Mailed from the USPTO on November 13, 2008**

In the response filed on August 1, 2008, claims 40-47 were amended to recite the term "recombinant antibody" instead of the original term a "monoclonal antibody." As a consequence of the recitation of the term "recombinant antibody" instead of "monoclonal

antibody," the Examiner determined that the amended subject matter was drawn to a nonelected invention.

Therefore, the examiner withdrew Claims 40-47 from consideration for being directed to nonelected inventions, based on the finding that the claims, as amended, are drawn to subject matter that was not encompassed by the originally claimed and substantively examined invention.

For the record, Applicants acquiesced to the withdrawal of Claims 40-47 from consideration in the instant application and expressly reserve the right to pursue the withdrawn/restricted subject matter in the context of a continuing application.

#### **Compliance with the Sequence Listing Rules**

During a teleconference with Examiner Duffy regarding the status of this application, he indicated that he has also noted that there appears to be more sequences disclosed in the application, than there are sequences in the sequence listing. He indicated that once the non-compliance issue associated with the AAF response is overcome, he could issue a Quayle Action to afford the Applicants a window of time to review the sequence disclosures and bring the specification and sequence listing into compliance with the sequence listing rules.

**Summary**

For the reasons set forth hereinabove, Applicants respectfully request that in light of the cancellation of claims 48 and 49 (the only claims having outstanding substantive rejections stated in the Final Rejection) and the cancellation of claims 13-27, 29-32 and 40-47 (claims which were previously withdrawn from consideration) that the Examiner enter the Amendment After Final into the record, close prosecution of instant application and issue either a Quayle Action, or a Notice of Allowance for the subject matter of claims 7-9, 28 and 33-39.

If a telephone interview would be of assistance in advancing prosecution of the subject application, Applicants' undersigned attorney invites the Examiner to telephone her at the number provided below.

Respectfully submitted,

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